

MONTANA LEGISLATIVE HISTORY

Chapter 179 1997

Bill H 375 S _____

Original bill & history ☒ C

H. Committee on Bus + Labor

Hearing Date(s) _____ C

2/4 ☒ C

_____ C

_____ C

Date Out

2/4 ☒ C

S. Committee on Bus + Industry

Hearing Date(s) _____ C

3/19 ☒ C

_____ C

_____ C

3/19 ☒

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____

Report _____

LEGISLATIVE HISTORIES SINCE 1997

The scope and depth of legislative committee minutes varies by year and by committee. If you would like additional information about a hearing, you may want to determine whether the hearing was recorded. In addition, some recent floor debates were also recorded. For information on accessing or purchasing these recordings, contact the Historical Society Archives at 406-444-4774.

If you have concerns regarding the format of the enclosed committee minutes or the recordings of the hearings, it is suggested that you contact your state legislators.

2/05 HEARING
 2/06 FISCAL NOTE PRINTED
 2/12 TABLED IN COMMITTEE
 2/27 MISSED DEADLINE FOR 45TH DAY TRANSMITTAL
 DIED IN COMMITTEE

HB 375 INTRODUCED BY RYAN, ET AL.

LC0887 DRAFTER: KURTZ

REVISE REGULATIONS GOVERNING EXCAVATIONS NEAR UNDERGROUND
 UTILITIES

1/28	INTRODUCED		
1/28	FIRST READING		
1/28	REFERRED TO BUSINESS & LABOR		
2/04	HEARING		
2/05	COMMITTEE REPORT—BILL PASSED		
2/06	2ND READING PASSED	92	6
2/07	3RD READING PASSED	94	6
	TRANSMITTED TO SENATE		
2/08	FIRST READING		
2/08	REFERRED TO BUSINESS & INDUSTRY		
3/19	HEARING		
3/21	COMMITTEE REPORT—BILL CONCURRED		
3/22	2ND READING CONCURRED	49	0
3/24	3RD READING CONCURRED	49	1
	RETURNED TO HOUSE		
3/26	SIGNED BY SPEAKER		
3/27	SIGNED BY PRESIDENT		
3/28	TRANSMITTED TO GOVERNOR		
4/01	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 179		
	EFFECTIVE DATE: 10/01/97		

HB 376 INTRODUCED BY TROPILA, ET AL.

LC1281 DRAFTER: PETESCH

INCREASE PUBLIC INPUT INTO STATE AGENCY DECISIONS BY REQUIRING
 A PUBLIC HEARING HELD FOR AN ACTION THAT DIRECTLY IMPACTS A
 SPECIFIC COMMUNITY OR AREA TO BE HELD IN AN ACCESSIBLE
 FACILITY IN THE IMPACTED COMMUNITY OR AREA

1/28	INTRODUCED		
1/28	FIRST READING		
1/28	REFERRED TO STATE ADMINISTRATION		
1/28	FISCAL NOTE REQUESTED		
2/03	FISCAL NOTE RECEIVED		
2/06	HEARING		
2/06	FISCAL NOTE PRINTED		
2/08	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/13	2ND READING PASSED	94	5
2/14	3RD READING PASSED	94	5
	TRANSMITTED TO SENATE		
2/17	FIRST READING		
2/17	REFERRED TO STATE ADMINISTRATION		
3/10	HEARING		
3/11	COMMITTEE REPORT—BILL CONCURRED		
3/14	2ND READING CONCURRED AS AMENDED	48	1
3/15	3RD READING CONCURRED	41	6
	RETURNED TO HOUSE WITH AMENDMENTS		
4/10	2ND READING AMENDMENTS CONCURRED	85	9
4/11	3RD READING CONCURRED AS AMENDED	91	5
4/20	SIGNED BY SPEAKER		

INTRODUCED BY

House BILL NO.

375

Aguiar *St. John* *Hansen* *Kenz* *Smith* *Brady* *Swanson* *HART*

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING REGULATIONS GOVERNING EXCAVATIONS NEAR UNDERGROUND UTILITIES; CLARIFYING CERTAIN DEFINITIONS; DEFINING "EMERGENCY EXCAVATION", "EMERGENCY LOCATE", "EXCAVATOR", AND "LOCATE"; ELIMINATING THE REQUIREMENT THAT A PUBLIC UTILITY FILE UNDERGROUND FACILITY INFORMATION WITH THE COUNTY CLERK AND RECORDER; CLARIFYING GENERAL AND EMERGENCY EXCAVATION AND LOCATION REQUIREMENTS; AMENDING SECTIONS 69-4-501, 69-4-502, 69-4-503, AND 69-4-504, MCA; AND REPEALING SECTIONS 69-4-506 AND 69-4-511, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 69-4-501, MCA, is amended to read:

"69-4-501. Definitions. The following definitions shall apply to this part:

(1) "Business day" means any day other than Saturday, Sunday, ~~or a legal local, state, or federal holiday~~ New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

(2) ~~"Emergency"~~ "Emergency excavation" means an excavation in response to an emergency locate that is necessary to:

(a) ~~any~~ alleviate a condition that constitutes a clear and present danger to life or property; or

(b) repair a customer outage involving a previously installed utility-owned facility.

(3) "Emergency locate" means a locate and mark that is requested for:

(a) a condition that constitutes a clear and present danger to life or property; or

(b) a customer outage for which repairs on a previously installed utility-owned facility are required.

~~(3)(4)~~ "Excavation" means ~~any~~ an operation in which earth, rock, or other material in the ground is moved, removed, or otherwise displaced by means or use of any tools, equipment, or explosives. The term includes but is not limited to grading, trenching, digging, ditching, drilling, augering, tunneling, scraping, and cable or pipe plowing and driving. Excavation does not include surface road grading maintenance or road or ditch maintenance that does not change the original road or ditch grade or flow line.

(5) "Excavator" means a person conducting the excavation activities defined in subsection

(4)(6) "Identified but unlocatable underground facility" means an underground facility that has been identified but cannot be located with reasonable accuracy.

(6)(7) "Locatable underground facility" means an underground facility that can be field-located or field-marked with reasonable accuracy.

(8) "Locate" means to use specialized equipment to identify the location of underground facilities or the actual location of underground facilities identified by the use of specialized equipment.

(6)(9) "Mark" means the use of stakes, paint, or other clearly identifiable material to show the location, or absence, of underground facilities, in accordance with the current color code standard of the American public works association. Marking must include identification letters indicating the specific location of underground facility, and the width of the facility if it is greater than 6 inches.

(7)(10) "One-call notification center" means a service through which a person may request locating and marking of underground facilities.

(8)(11) "Person" means an individual, partnership, firm, joint venture, corporation, association, municipality, governmental unit, department, or agency, and includes any a trustee, receiver, assignee, or a personal representative thereof of the listed entities.

(9)(12) "Reasonably accurate" means location within 18 inches of the outside lateral dimension of both sides of an underground facility.

(10)(13) "Underground facility" means any a facility buried or placed below ground for use in connection with the storage or conveyance of water, sewage, electronic, telephonic or telegraphic communications, cablevision, fiber optics, electric energy, oil, gas, or other substances. The term includes but is not limited to pipes, sewers, conduits, cables, valves, lines, wires, manholes, and attachments to the listed items."

Section 2. Section 69-4-502, MCA, is amended to read:

"69-4-502. Information to be sought before excavation -- notification -- exceptions. (1) (a) Except as provided in subsection (1)(b), a person an excavator may not make or begin any an excavation on a public street, alley, right of way dedicated to the public use, or utility easement without first obtaining information concerning the possible location of any an underground facility from each public utility, municipal corporation, underground facility owner, or other person having the right to bury underground

facilities that is a member of a one-call notification center pursuant to subsection (2)(a) within the public street, alley, right of way, or utility easement.

(b) (i) A registered land surveyor or a person under the supervision of a registered land surveyor may hand dig for shallow survey monuments at a depth of 12 inches or less below the road surface of a highway or at the intersection of the center lines of public streets.

(ii) The registered land surveyor, prior to hand digging, shall obtain proper approval from the appropriate governing authority regarding safety and pavement repair and, when appropriate, shall reference the monument upon exposure.

(iii) The governing authority is not liable for any damages caused or suffered by the registered land surveyor or any person under the supervision of the registered land surveyor.

(iv) The registered land surveyor is liable for damages incurred regarding utility facility destruction, and any

(v) A public utility, municipal corporation, underground facility owner, or other person having the right to bury underground facilities ~~within the public street, alley, right of way, or utility easement~~ is not liable for any damages suffered by the registered land surveyor or any person under the control of the registered land surveyor.

~~(2) Every public utility, municipal corporation, or other person having the right to bury underground facilities shall file with the county clerk and recorder in each county where the underground facilities are located, the name, address, and telephone number of the person or persons from whom the necessary information may be obtained unless a one-call notification center is available.~~

~~(3)(2)~~ (a) A public utility, municipal corporation, underground facility owner, or person having the right to bury underground facilities must be a member of a one-call notification center covering the service area in which the entity or person has underground facilities.

(b) Subsection ~~(3)(a)~~ (2)(a) does not apply to an owner or occupant of real property where underground facilities are buried if the facilities are used solely to furnish services or commodities to that property and no part of the facilities ~~are~~ is located in a public street, alley, or right-of-way dedicated to the public use."

Section 3. Section 69-4-503, MCA, is amended to read:

"69-4-503. Notification -- locating and marking. (1) ~~At least 2 but not more than 10 business days~~

1 ~~before~~ Before beginning ~~any~~ an excavation, the excavator shall notify, through a one-call notification center,
2 all owners of underground facilities in the area of the proposed excavation ~~of the scheduled commencement~~
3 ~~of the excavation. If a one-call notification center service is not available, notice must be provided~~
4 ~~individually to the owners of underground facilities within the area of the proposed excavation.~~

5 (2) After an excavator has notified the appropriate one-call notification center of a proposed
6 excavation, an owner of an underground facility shall:

7 (a) provide the locates and mark the location within 2 business days; or

8 (b) respond immediately if the excavator notifies the one-call notification center that an emergency
9 exists.

10 (3) (a) After an owner of an underground facility has located and marked the underground facility,
11 the excavator shall determine if weather, time, or other factors may have affected location markings
12 warranting relocation of the facilities.

13 (b) If excavation has not occurred within 30 days of the locate and mark, the excavator shall
14 request that the facility be relocated and remarked before excavating unless other arrangements have been
15 made with the underground facility owner. The excavator is responsible for costs associated with relocation
16 and remarking a facility that is not excavated within 30 days of the locate and mark.

17 ~~(2)(4)~~ (4) Upon receipt of the notice provided for in this section, the owner of the underground facility
18 shall provide the excavator with reasonably accurate information as to the owner's locatable underground
19 facilities by surface locating and marking the location of the facilities. If there are identified but unlocated
20 underground facilities, the owner of the facilities shall provide the excavator with the best available
21 information as to their locations. ~~Excavators~~ An excavator may not excavate until all known facilities have
22 been located and marked. An excavator is not responsible for damages to an underground facility that
23 cannot be located by its owner. Once the facilities are located and marked by the facility owner, the
24 excavator is responsible for maintaining the markings.

25 ~~(2)(5)~~ (5) Upon receipt of notice from the excavator, the facility owner shall respond within 2 business
26 days by locating and marking the facility or by notifying the excavator that locating and marking is
27 unnecessary. An excavator may not begin excavating before the locating and marking is complete or before
28 the excavator is notified that locating and marking is unnecessary.

29 ~~(4)(6)~~ (6) A facility owner may request the excavator to mark the area to be excavated. An excavator
30 shall locate and mark the area to be excavated if requested by the facility owner or the owner of the

representative. If an excavator discovers an ~~unmarked~~ underground facility that has not been located and marked, the excavator shall stop excavating in the vicinity of the facility and notify the facility owner or the one-call notification center.

(7) An underground facility owner may attempt to identify the location of a private underground facility connected to the owner's facility, but the facility owner is not liable for the accuracy of the locate."

Section 4. Section 69-4-504, MCA, is amended to read:

"69-4-504. Information to be part of architects' and engineers' plans. (1) Architects and engineers designing projects requiring excavation in or adjacent to any public street, alley, or right-of-way dedicated to public use or utility easement shall obtain information from the owners of underground facilities and then make the information a part of the plan by which the contractors operate. The owners of the underground facilities shall ~~provide substantially the same information as required by 69-4-503~~ make available all records showing the locations of underground facilities and shall provide locates, if requested, pursuant to 69-4-503.

(2) ~~Nothing in this~~ This section shall ~~does not~~ excuse ~~any~~ a person from the obligation imposed by 69-4-502(1)."

NEW SECTION. Section 5. Emergency location and excavation. (1) When an emergency excavation is required, the excavator shall notify the one-call notification center. An underground facility owner shall respond as soon as is practical after notification.

(2) Requesting an emergency locate or an emergency excavation that is not an emergency locate or an emergency excavation as those terms are defined constitutes a false alarm pursuant to 45-7-204 and is subject to the penalties under 45-7-204.

NEW SECTION. Section 6. Repealer. Sections 69-4-506 and 69-4-511, MCA, are repealed.

NEW SECTION. Section 7. Codification instruction. [Section 5] is intended to be codified as an integral part of Title 69, chapter 4, part 5, and the provisions of Title 69, chapter 4, part 5, apply to [section 5].

-END-

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
55th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON BUSINESS & LABOR

Call to Order: By CHAIRMAN BRUCE SIMON, on February 4, 1997, at 8:00 AM, in Room 104.

ROLL CALL

Members Present:

Rep. Bruce T. Simon, Chairman (R)
Rep. Paul Sliter, Vice Chairman (Majority) (R)
Rep. Robert J. "Bob" Pavlovich, Vice Chairman (Minority) (D)
Rep. Joe Barnett (R)
Rep. Rod Bitney (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Charles R. Devaney (R)
Rep. David Ewer (D)
Rep. Kim Gillan (D)
Rep. Billie Krenzler (D)
Rep. Bob Lawson (R)
Rep. Rod Marshall (R)
Rep. Gay Ann Masolo (R)
Rep. Wes Prouse (R)
Rep. Carolyn M. Squires (D)
Rep. Jay Stovall (R)
Rep. Cliff Trexler (R)
Rep. Joe Tropila (D)
Rep. Carley Tuss (D)

Members Excused: None

Members Absent: None

Staff Present: Stephen Maly, Legislative Services Division
Pati O'Reilly, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 375, HB 364, HB 382, SB 56
(1/29/97)
HB 406, HB 409 (1/31/97)

Executive Action: HB 375; HB 382; SB 56

Rick Landfeller

{Tape: 2; Side: 1; Approx. Time Count: 41.8; Comments: None.}

Jan Rehberg, for Gary Oakland

{Tape: 2; Side: 1; Approx. Time Count: 42.2; Comments: None.}

Opponents' Testimony:

Derek Berne, MT Peoples Action. EXHIBIT 9.

{Tape: 2; Side: 2; Approx. Time Count: .6; Comments: None.}

Tara Meile, MPIRC, EXHIBIT 7.

{Tape: 2; Side: 2; Approx. Time Count: 6.4; Comments: None.}

Carol Haughland, MT Peoples Action

{Tape: 2; Side: 2; Approx. Time Count: 9.8; Comments: None.}

Russell LaVinge, MT Welfare and Low Income Coalition EXHIBIT 8.

{Tape: 2; Side: 2; Approx. Time Count: 12.4; Comments: None.}

Questions From Committee Members and Responses:

{Tape: 2; Side: 2; Approx. Time Count: 16.6; Comments: None.}

Closing by Sponsor:Rep. Bankhead closed.

{Tape: 2; Side: 2; Approx. Time Count: 31.4; Comments: None.}

HEARING ON HB 375

Opening Statement by Sponsor: Rep. Bill Ryan, H.D. 44 introduced the bill.

{Tape: 2; Side: 2; Approx. Time Count: 33.6; Comments: None.}

Proponents' Testimony:

Carl Schweitzer, MT Contractors Assn.

{Tape: 2; Side: 2; Approx. Time Count: 39.5; Comments: None.}

Doug Hardy, Park Electric

{Tape: 3; Side: 1; Approx. Time Count: .4; Comments: None.}

Bud Krezler, MT Utility Coordinating Council

{Tape: 3; Side: 1; Approx. Time Count: .8; Comments: None.}

Tim Evanson, A T and T

{Tape: 3; Side: 1; Approx. Time Count: 2.; Comments: None}

Opponents' Testimony: None

Questions From Committee Members and Responses: None.

Closing by Sponsor:Rep. Ryan closed.

{Tape: 3; Side: 1; Approx. Time Count: 2.6; Comments: None.}

EXECUTIVE ACTION ON HB 382

Motion/Vote: Rep. Sliter moved do pass HB 382. Motion carried unanimously.

{Tape: 3; Side: 1; Approx. Time Count: 37.8; Comments: None.}

EXECUTIVE ACTION ON HB 375

Motion/Vote: Rep. Pavlovich moved do pass HB 375. Motion passed unanimously.

{Tape: 3; Side: 1; Approx. Time Count: 38.8; Comments: None.}

HOUSE OF REPRESENTATIVES

BUSINESS AND LABOR COMMITTEE

ROLL CALL

DATE 2/4/97

NAME	PRESENT	ABSENT	EXCUSED
Bruce Simon, Chairman	✓		
Paul Sliter Vice Chairman	✓		
Bob Pavlovich, Vice Chairman	✓		
Joe Barnett	✓		
Rod Bitney	✓		
Sylvia Bookout	✓		
Charles Devaney	✓		
David Ewer	✓		
Kim Gillan	✓		
Billie Krenzler	✓		
Bob Lawson	✓		
Rod Marshall	✓		
Gay Ann Masolo	✓		
Wes Prouse	✓		
Carolyn Squires	✓		
Jay Stovall	✓		
Cliff Trexler	✓		
Joe Tropila	✓		
Carley Tuss	✓		

MONTANA HOUSE OF REPRESENTATIVES VISITORS REGISTER

DATE 2-4-97

BILL NO. HB 375

SPONSOR(S) Ryan

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE
CIRCLE

NAME

ADDRESS

REPRESENTING

POI	Carl Schweitzer		MT. Cont. Ass'n
POI	Bill Miller	Helena	W/UCC
POI	John Emerson	Helena	AT&T
POI	Darryl W...	Great Falls	MT. Elec. Co-op Ass'n
POI	Vong Hardy	LIVINGSTON	PARK ELECTRIC
POI			
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PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.



HOUSE STANDING COMMITTEE REPORT

February 4, 1997

Page 1 of 1

Mr. Speaker: We, the committee on Business and Labor report that House Bill 375 (first reading copy -- white) do pass.

Signed:

A handwritten signature in black ink, appearing to read "Bruce Simon", is written over a horizontal line.

Bruce Simon, Chair

Committee Vote:
Yes 19, No 0.

2/3
mp
261328SC.Hgd

14

SENATE BUSINESS & INDUSTRY

Page 3

- BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE ----- REREFERRED ---- DATE READ

HB0331	SOFT, LOREN		AMEND YOUTH ACCESS TO TOBACCO PRODUCTS CONTROL ACT		
	2/14	3/07	CONCUR AS AMENDED	03/07 VOTE: 6-0	3/11
HB0350	BEAUDRY, HALEY		REVISE ECONOMIC DEVELOPMENT INVESTMENT PROGRAM		
	2/04	3/05	CONCUR	03/07 VOTE: 6-0	3/07
HB0357	WELLS, JACK		CLARIFY LANDLORD'S WAIVER OF CLAIMED RENTAL AGREEMENT BREACH BY TENANT		
	2/06	3/12	CONCUR	03/12 VOTE: 6-0	3/13
HB0375	RYAN, WILLIAM		REVISING REGULATIONS REGARDING EXCAVATION NEAR UNDERGROUND UTILITY		
	2/07	3/19	CONCUR	03/19 VOTE: 6-0	3/21
HB0382	ORR, SCOTT		EXTEND PERMISSIBILITY OF INSTALLING BELOW-GRADE LPG-BURNING APPLIANCES		
	2/07	3/12	CONCUR	03/12 VOTE: 6-0	3/13
HB0388	SIMON, BRUCE		GENERALLY REVISE BUILDING CODE LAWS		
	2/19	3/13	CONCUR AS AMENDED	03/25 VOTE: 6-0	3/26
HB0391	ROSE, JOHN		IMPLEMENT ONE-STOP BUSINESS LICENSING PILOT PROJECT		
	4/02	4/07	CONCUR	04/07 VOTE: 6-0	4/07
HB0399	TUSS, CARLEY		TRANSFER CHEMICAL DEPENDENCY COUNSELOR CERTIFICATION TO COMMERCE FROM DPHHS		
	2/11	3/13	CONCUR AS AMENDED	03/19 VOTE: 6-0	3/21
HB0406	BANKHEAD, PAUL		GENERALLY REVISE LANDLORD AND TENANT LAWS		
	2/12	3/18	CONCUR AS AMENDED	03/19 VOTE: 6-0	3/21
HB0431	QUILICI, JOE		PROHIBIT UNAUTHORIZED CHANGE IN LONG DISTANCE SERVICE PROVIDER ("SLAMMING")		
	2/19	3/14	CONCUR AS AMENDED	03/19 VOTE: 6-0	3/21
HB0435	HARPER, HAL		REQUIRE CERTAIN INFO WHEN MAKING CAT OR DOG AVAILABLE FOR SALE OR ADOPTION		
	2/19	3/14	CONCUR AS AMENDED	03/19 VOTE: 4-1	3/21
HB0478	WISEMAN, WILLIAM		REVISING DEF. OF "GLASS BROKER"; REVISE PROHIBITIONS IN RE AUTO GLASS SALES		
	2/19	3/14	CONCUR	03/19 VOTE: 6-0	3/21

House BILL NO. 375

State Hunter-Kenzler and Ruby Swanson

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:



**Legislative
Services
Division**

APPROVED BY COM ON
BUSINESS & LABOR

INTRODUCED BY

House BILL NO. 375

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING REGULATIONS GOVERNING EXCAVATIONS NEAR UNDERGROUND UTILITIES; CLARIFYING CERTAIN DEFINITIONS; DEFINING "EMERGENCY EXCAVATION", "EMERGENCY LOCATE", "EXCAVATOR", AND "LOCATE"; ELIMINATING THE REQUIREMENT THAT A PUBLIC UTILITY FILE UNDERGROUND FACILITY INFORMATION WITH THE COUNTY CLERK AND RECORDER; CLARIFYING GENERAL AND EMERGENCY EXCAVATION AND LOCATION REQUIREMENTS; AMENDING SECTIONS 69-4-501, 69-4-502, 69-4-503, AND 69-4-504, MCA; AND REPEALING SECTIONS 69-4-506 AND 69-4-511, MCA."

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15 liable for any damages suffered by the registered land surveyor or any person under the control of the
16 registered land surveyor.

17 ~~(2) Every public utility, municipal corporation, or other person having the right to bury underground~~
18 ~~facilities shall file with the county clerk and recorder in each county where the underground facilities are~~
19 ~~located, the name, address, and telephone number of the person or persons from whom the necessary~~
20 ~~information may be obtained unless a one-call notification center is available.~~

21 ~~(3)(2)~~ (a) A public utility, municipal corporation, underground facility owner, or person having the
22 right to bury underground facilities must be a member of a one-call notification center covering the service
23 area in which the entity or person has underground facilities.

24 (b) Subsection ~~(3)(a)~~ (2)(a) does not apply to an owner or occupant of real property where
25 underground facilities are buried if the facilities are used solely to furnish services or commodities to that
26 property and no part of the facilities ~~are~~ is located in a public street, alley, or right-of-way dedicated to the
27 public use."

28
29 **Section 3.** Section 69-4-503, MCA, is amended to read:

30 **"69-4-503. Notification -- locating and marking.** (1) ~~At least 2 but not more than 10 business days~~

1 ~~before~~ Before beginning ~~any an~~ excavation, the excavator shall notify, through a one-call notification center,
2 all owners of underground facilities in the area of the proposed excavation ~~of the scheduled commencement~~
3 ~~of the excavation. If a one-call notification center service is not available, notice must be provided~~
4 ~~individually to the owners of underground facilities within the area of the proposed excavation.~~

5 (2) After an excavator has notified the appropriate one-call notification center of a proposed
6 excavation, an owner of an underground facility shall:

7 (a) provide the locates and mark the location within 2 business days; or

8 (b) respond immediately if the excavator notifies the one-call notification center that an emergency
9 exists.

10 (3) (a) After an owner of an underground facility has located and marked the underground facilities,
11 the excavator shall determine if weather, time, or other factors may have affected location marks,
12 warranting relocation of the facilities.

13 (b) If excavation has not occurred within 30 days of the locate and mark, the excavator shall
14 request that the facility be relocated and remarked before excavating unless other arrangements have been
15 made with the underground facility owner. The excavator is responsible for costs associated with relocating
16 and remarking a facility that is not excavated within 30 days of the locate and mark.

17 ~~(2)(4)~~ (4) Upon receipt of the notice provided for in this section, the owner of the underground facility
18 shall provide the excavator with reasonably accurate information as to the owner's locatable underground
19 facilities by surface locating and marking the location of the facilities. If there are identified but unlocatable
20 underground facilities, the owner of the facilities shall provide the excavator with the best available
21 information as to their locations. ~~Excavators~~ An excavator may not excavate until all known facilities have
22 been located and marked. An excavator is not responsible for damages to an underground facility that
23 cannot be located by its owner. Once the facilities are located and marked by the facility owner, the
24 excavator is responsible for maintaining the markings.

25 ~~(3)(5)~~ (5) Upon receipt of notice from the excavator, the facility owner shall respond within 2 business
26 days by locating and marking the facility or by notifying the excavator that locating and marking is
27 unnecessary. An excavator may not begin excavating before the locating and marking is complete or before
28 he the excavator is notified that locating and marking is unnecessary.

29 ~~(4)(6) A facility owner may request the excavator to mark the area to be excavated~~ An excavator
30 shall locate and mark the area to be excavated if requested by the facility owner or the owner's

20

1 representative. If an excavator discovers an unmarked underground facility that has not been located and
2 marked, the excavator shall stop excavating in the vicinity of the facility and notify the facility owner or
3 the one-call notification center.

4 (7) An underground facility owner may attempt to identify the location of a private underground
5 facility connected to the owner's facility, but the facility owner is not liable for the accuracy of the locate."
6

7 **Section 4.** Section 69-4-504, MCA, is amended to read:

8 **"69-4-504. Information to be part of architects' and engineers' plans.** (1) Architects and engineers
9 designing projects requiring excavation in or adjacent to any public street, alley, or right-of-way dedicated
10 to public use or utility easement shall obtain information from the owners of underground facilities and then
11 make the information a part of the plan by which the contractors operate. The owners of the underground
12 facilities shall ~~provide substantially the same information as required by 69-4-503~~ make available all records
13 showing the locations of underground facilities and shall provide locates, if requested, pursuant to
14 69-4-503.

15 (2) ~~Nothing in this~~ This section shall does not excuse ~~any~~ a person from the obligation imposed
16 by 69-4-502(1)."
17

18 **NEW SECTION. Section 5. Emergency location and excavation.** (1) When an emergency
19 excavation is required, the excavator shall notify the one-call notification center. An underground facility
20 owner shall respond as soon as is practical after notification.

21 (2) Requesting an emergency locate or an emergency excavation that is not an emergency locate
22 or an emergency excavation as those terms are defined constitutes a false alarm pursuant to 45-7-204 and
23 is subject to the penalties under 45-7-204.
24

25 **NEW SECTION. Section 6. Repealer.** Sections 69-4-506 and 69-4-511, MCA, are repealed.
26

27 **NEW SECTION. Section 7. Codification instruction.** [Section 5] is intended to be codified as an
28 integral part of Title 69, chapter 4, part 5, and the provisions of Title 69, chapter 4, part 5, apply to
29 [section 5].
30

-END-

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By CHAIRMAN JOHN HERTEL, on March 19, 1997, at
9:00 A.M., in ROOM 410.

ROLL CALL

Members Present:

Sen. John R. Hertel, Chairman (R)
Sen. Steve Benedict, Vice Chairman (R)
Sen. Debbie Bowman Shea (D)
Sen. William S. Crismore (R)
Sen. C.A. Casey Emerson (R)
Sen. Bea McCarthy (D)

Members Excused: None

Members Absent: None

Staff Present: Bart Campbell, Legislative Services Division
Mary Gay Wells, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 375; HB 533; 3/5/97
Executive Action: HB 375; HB 533; HB 431;
HB 435; HB 406; HB 78;
HB 399; HB 478; HB 492
HB 287 TABLED

HEARING ON HB 375

Sponsor: REP. WILLIAM RYAN, HD 44, GREAT FALLS

Proponents: Carl Schweitzer, MT Contractors Assoc.
Don Chance, MT Building Industry Assoc.
Kurt Baltrusch, Montana-Dakota Utilities, Billings
Gary Wiens, MT Electric Cooperatives Association
Bud Criner, One Call Service Center

Opponents: None

Opening Statement by Sponsor:

REP. WILLIAM RYAN, HD 44, GREAT FALLS. HB 375 cleans up some present language in the law. It is an act revising regulations governing excavations near underground utilities, clarifying some definitions, defining "emergency excavation". We removed some sections of law by eliminating requirements that the public utilities file underground facility information with the county clerk and recorder. This was not being done and the clerks absolutely felt that this was ridiculous. Now it is up to the companies to keep track of their own underground work. It also clarifies the general and emergency excavation and location requirements. Under section 1, business day and holidays are defined. Some of the time requirements are clarified about when you have to mark a running location. There are three new sections. This is an industry-wide effort from the people who do the locations to the electric cooperatives who bury wires underground to telephone cooperatives, to Montana Power Company, to contractors, etc. They are here to answer any questions. Thank you.

Proponents' Testimony:

Carl Schweitzer, MT Contractors Association. We started the process of looking at the basics of HB 375 last July. The contractors that I represent and the people who do a lot of underground work were the ones that were involved in the process as well as the One Call Center people who sat down and did some work to bring the statute into today's environment and work conditions. We are in support of this bill.

Don Chance, MT Building Industry Association. We also stand in support of this legislation. There is one key component in this bill which will dramatically help us. It improves the turn around time from when we make a phone call to when utilities get out on site to inspect. It is a two-day turn around time. Thank you for your support.

Kurt Baltrusch, Montana-Dakota Utilities, Billings. I am a licensed professional engineer. I have been with this company since 1967. I have seen excavation damage virtually from both ends of the shovel. However, our pipeline system is very safe and efficient but when something happens, it can happen big time and cause critical problems. Sometimes, I think "big brother" is a detriment to our operation as far as safety goes. In this case, the One Call legislation which is supported by the Department of Transportation and others is definitely a shining star in the legislation that we work with. It resulted in a true simplification of the way excavators have to work and it makes it easier for us also. The Montana One Call law is patterned after many other effective laws and at the same time, we found some operational concerns that are minimal as REP. RYAN mentioned. They range from defining holidays to actually the way the excavators can mark and locate their excavations and take care of

the excavations so that they get them located properly and dug up properly. I hope you will support this bill.

Gary Wiens, MT Electric Cooperatives Association. We are in support of this legislation. We believe it clears up some potential misunderstandings over responsibilities involved in excavation and locations including locations of private underground facilities. We urge your support of HB 375.

Bud Criner, One Call Center. As a claims adjuster for U. S. West for underground lines, I know where problems arose. We started with eight utilities and are able to identify about 12,000 locates. Today we have over 54,000 locates per year and we have been increasing those locates by an average of between 5,000 and 6,000 locates a year coming from the excavators out in the field. This system is definitely being used. We now have in excess of 140 utilities and there are more utilities signing up by about 18 a year. The system is being well utilized not only by the excavators in the field but homeowners and the utilities themselves. Thank you.

Opponents' Testimony: None

Questions From Committee Members and Responses:

SEN. CASEY EMERSON asked **Mr. Criner** to explain what a one call is. **Mr. Criner** said that the idea of a one call center is so that anyone who wants to excavate makes one call. Here in Montana he calls the center that he is involved at an "800" number. We take all the information that is required for the utility to do the locate and then we pass that off to all the utilities that have signed up with the system. To date, one call generates about 5 calls to the utilities on an average.

SEN. EMERSON asked if all the utilities in Montana belong to this? **Mr. Criner** stated that at the present time they have all the telephone companies, all but one electrical coop, all the large communities and many water systems. This does not include private homes. There are companies who do that.

Closing by Sponsor:

REP. RYAN closed. Thank you for a good hearing. I have worked for years in the electrical industry and have been on both sides of the shovel. I've looked at the damage and have run the backhoe that sometimes causes the damage. Locations are a serious business to the people in the industry. This is a good bill.

EXECUTIVE ACTION ON HB 375

Motion/Vote: **SEN. BEA MCCARTHY** MOVED HB 375 BE CONCURRED IN.
THE MOTION CARRIED UNANIMOUSLY: 6-0 SEN. J. D. LYNCH WILL CARRY.

{Tape: 1; Side: A; Approx. Time Count: 9:28 AM; Comments: AN 8
MINUTE BREAK WAS TAKEN.}

HEARING ON HB 533

Sponsor: REP. CHARLES DEVANEY, HD 97, PLENTYWOOD

Proponents: Dan Walker, DuBray Land Services
Margaret Morgan, MT Assoc. of Realtors
Mike Strand, MT Independent Telecommunications
Systems
Barbara Ranf, U. S. West
Gary Wiens, MT Electric Cooperatives Association

Opponents: None

Opening Statement by Sponsor:

REP. CHARLES DEVANEY, HD 97, PLENTYWOOD. HB 533 treats a very small segment of our economy. There is a certain vocation in Montana that supplies service to government entities or public utilities in obtaining right-of-ways and easements. Sometime ago, the Board of Realtors reviewed the things that these people do and decided that because they are out obtaining real estate easements that they should carry salesmen's licenses. The people went ahead and applied for a salesmen's license. Then they had a hard time finding a broker to work for because they don't get paid for listings, commissions, etc. Basically they get paid for the job that they do with Montana Power Co., etc. So they had a hard time getting a broker to work under. These people worked for two or three years and decided that now they knew what they were doing, why not apply for a broker's license. But the Board of Realtors said no they couldn't apply for a broker's license because they were not qualified. So they didn't really fit into any particular niche. The two groups then reached an agreement that resulted in HB 533. People who are doing this narrow scope of activity would be exempted from carrying a salesmen's license for the realtors. That is what this bill does.

Proponents' Testimony:

Dan Walker, DuBray Land Services, Billings. I was involved in the negotiations with the MT Board of Realtors in which we came up with the exemption. We feel that this is the best solution for all concerned. In the House committee there were some questions about the types of work that we do. Typically a company like mine is employed by any number of other entities, sometimes even individuals whereby we research documents in the court house for obtaining rights-of-way for utility companies, for highway jobs, for airports, for pipeline companies, etc. Our work is almost always involved with securing rights-of-ways.

Margaret Morgan, MT Association of Realtors. We recognize the problem that exists for licensure for those individuals that are

**MONTANA SENATE
1997 LEGISLATURE
BUSINESS AND INDUSTRY COMMITTEE**

ROLL CALL

DATE 3-19-97

[illegible]

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SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 19, 1997

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration House Bill 375 (third reading copy -- blue), respectfully report that House Bill 375 be concurred in.

Signed: John Hertel

Senator John R. Hertel, Chair

TS Amd. Coord.
SP Sec. of Senate

Senator J. D. Lynch
Senator Carrying Bill

601242SC.STS

27

HOUSE BILL NO. 375

INTRODUCED BY RYAN, PROUSE, LYNCH, ROSE, HARP, SQUIRES, SLITER, HARRINGTON,
KRENZLER, SHEA, GRADY, SWANSON

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING REGULATIONS GOVERNING EXCAVATIONS NEAR UNDERGROUND UTILITIES; CLARIFYING CERTAIN DEFINITIONS; DEFINING "EMERGENCY EXCAVATION", "EMERGENCY LOCATE", "EXCAVATOR", AND "LOCATE"; ELIMINATING THE REQUIREMENT THAT A PUBLIC UTILITY FILE UNDERGROUND FACILITY INFORMATION WITH THE COUNTY CLERK AND RECORDER; CLARIFYING GENERAL AND EMERGENCY EXCAVATION AND LOCATION REQUIREMENTS; AMENDING SECTIONS 69-4-501, 69-4-502, 69-4-503, AND 69-4-504, MCA; AND REPEALING SECTIONS 69-4-506 AND 69-4-511, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 69-4-501, MCA, is amended to read:

"69-4-501. Definitions. The following definitions ~~shall~~ apply to this part:

(1) "Business day" means any day other than Saturday, Sunday, ~~or a legal local, state, or federal holiday~~ New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

(2) ~~"Emergency"~~ "Emergency excavation" means an excavation in response to an emergency locate that is necessary to:

(a) ~~any~~ alleviate a condition that constitutes a clear and present danger to life or property; or

(b) repair a customer outage involving a previously installed utility-owned facility.

(3) "Emergency locate" means a locate and mark that is requested for:

(a) a condition that constitutes a clear and present danger to life or property; or

(b) a customer outage for which repairs on a previously installed utility-owned facility are required.

~~(3)(4)~~ (4) "Excavation" means ~~any~~ an operation in which earth, rock, or other material in the ground is moved, removed, or otherwise displaced by means or use of any tools, equipment, or explosives. The term includes but is not limited to grading, trenching, digging, ditching, drilling, augering, tunneling, scraping, and cable or pipe plowing and driving. Excavation does not include surface road grading

1 maintenance or road or ditch maintenance that does not change the original road or ditch grade or flow line.

2 (5) "Excavator" means a person conducting the excavation activities defined in subsection (4).

3 (4)(6) "Identified but unlocatable underground facility" means an underground facility that has been
4 identified but cannot be located with reasonable accuracy.

5 (6)(7) "Locatable underground facility" means an underground facility that can be field-located and
6 field-marked with reasonable accuracy.

7 (8) "Locate" means to use specialized equipment to identify the location of underground facilities
8 or the actual location of underground facilities identified by the use of specialized equipment.

9 (6)(9) "Mark" means the use of stakes, paint, or other clearly identifiable material to show the field
10 location, or absence, of underground facilities, in accordance with the current color code standard of the
11 American public works association. Marking must include identification letters indicating the specific type
12 of underground facility, and the width of the facility if it is greater than 6 inches.

13 (7)(10) "One-call notification center" means a service through which a person may request a
14 locating and marking of underground facilities.

15 (8)(11) "Person" means an individual, partnership, firm, joint venture, corporation, association,
16 municipality, governmental unit, department, or agency, and includes any a trustee, receiver, assignee, or
17 a personal representative thereof of the listed entities.

18 (9)(12) "Reasonably accurate" means location within 18 inches of the outside lateral dimensions
19 of both sides of an underground facility.

20 (10)(13) "Underground facility" means any a facility buried or placed below ground for use in
21 connection with the storage or conveyance of water, sewage, electronic, telephonic or telegraphic
22 communications, cablevision, fiber optics, electric energy, oil, gas, or other substances. The term includes
23 but is not limited to pipes, sewers, conduits, cables, valves, lines, wires, manholes, and attachments to the
24 listed items."

25
26 **Section 2.** Section 69-4-502, MCA, is amended to read:

27 **"69-4-502. Information to be sought before excavation -- notification -- exceptions.** (1) (a) Except
28 as provided in subsection (1)(b), a person an excavator may not make or begin any an excavation ~~in a~~
29 ~~public street, alley, right-of-way dedicated to the public use, or utility easement~~ without first obtaining
30 information concerning the possible location of any an underground facility from each public utility,

1 municipal corporation, underground facility owner, or other person having the right to bury underground
2 facilities that is a member of a one-call notification center pursuant to subsection (2)(a) within the public
3 street, alley, right-of-way, or utility easement.

4 (b) (i) A registered land surveyor or a person under the supervision of a registered land surveyor
5 may hand dig for shallow survey monuments at a depth of 12 inches or less below the road surface of a
6 highway or at the intersection of the center lines of public streets.

7 (ii) The registered land surveyor, prior to hand digging, shall obtain proper approval from the
8 appropriate governing authority regarding safety and pavement repair and, when appropriate, shall reference
9 the monument upon exposure.

10 (iii) The governing authority is not liable for any damages caused or suffered by the registered land
11 surveyor or any person under the supervision of the registered land surveyor.

12 (iv) The registered land surveyor is liable for damages incurred regarding utility facility destruction,
13 and any

14 (v) A public utility, municipal corporation, underground facility owner, or other person having the
15 right to bury underground facilities within the public street, alley, right-of-way, or utility easement is not
16 liable for any damages suffered by the registered land surveyor or any person under the control of the
17 registered land surveyor.

18 ~~(2) Every public utility, municipal corporation, or other person having the right to bury underground~~
19 ~~facilities shall file with the county clerk and recorder in each county where the underground facilities are~~
20 ~~located, the name, address, and telephone number of the person or persons from whom the necessary~~
21 ~~information may be obtained unless a one-call notification center is available.~~

22 ~~(3)~~(2) (a) A public utility, municipal corporation, underground facility owner, or person having the
23 right to bury underground facilities must be a member of a one-call notification center covering the service
24 area in which the entity or person has underground facilities.

25 (b) Subsection ~~(3)(a)~~ (2)(a) does not apply to an owner or occupant of real property where
26 underground facilities are buried if the facilities are used solely to furnish services or commodities to that
27 property and no part of the facilities ~~are~~ is located in a public street, alley, or right-of-way dedicated to the
28 public use."

29
30 **Section 3.** Section 69-4-503, MCA, is amended to read:

A handwritten mark, possibly a signature or initials, located at the bottom right of the page.

1 **"69-4-503. Notification -- locating and marking.** ~~(1) At least 2 but not more than 10 business days~~
2 ~~before~~ Before beginning ~~any~~ an excavation, the excavator shall notify, through a one-call notification center,
3 all owners of underground facilities in the area of the proposed excavation ~~of the scheduled commencement~~
4 ~~of the excavation. If a one-call notification center service is not available, notice must be provided~~
5 ~~individually to the owners of underground facilities within the area of the proposed excavation.~~

6 (2) After an excavator has notified the appropriate one-call notification center of a proposed
7 excavation, an owner of an underground facility shall:

8 (a) provide the locates and mark the location within 2 business days; or

9 (b) respond immediately if the excavator notifies the one-call notification center that an emergency
10 exists.

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12 the excavator shall determine if weather, time, or other factors may have affected location marks,
13 warranting relocation of the facilities.

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18 ~~(2)~~(4) Upon receipt of the notice provided for in this section, the owner of the underground facility
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29 ~~he~~ the excavator is notified that locating and marking is unnecessary.

30 ~~(4)~~(6) A facility owner may request the excavator to mark the area to be excavated An excavator

shall locate and mark the area to be excavated if requested by the facility owner or the owner's representative. If an excavator discovers an ~~unmarked~~ underground facility that has not been located and marked, the excavator shall stop excavating in the vicinity of the facility and notify the facility owner or the one-call notification center.

(7) An underground facility owner may attempt to identify the location of a private underground facility connected to the owner's facility, but the facility owner is not liable for the accuracy of the locate."

Section 4. Section 69-4-504, MCA, is amended to read:

"69-4-504. Information to be part of architects' and engineers' plans. (1) Architects and engineers designing projects requiring excavation in or adjacent to any public street, alley, or right-of-way dedicated to public use or utility easement shall obtain information from the owners of underground facilities and then make the information a part of the plan by which the contractors operate. The owners of the underground facilities shall ~~provide substantially the same information as required by 69-4-503~~ make available all records showing the locations of underground facilities and shall provide locates, if requested, pursuant to 69-4-503.

(2) ~~Nothing in this~~ This section shall does not excuse ~~any~~ a person from the obligation imposed by 69-4-502(1)."

NEW SECTION. Section 5. Emergency location and excavation. (1) When an emergency excavation is required, the excavator shall notify the one-call notification center. An underground facility owner shall respond as soon as is practical after notification.

(2) Requesting an emergency locate or an emergency excavation that is not an emergency locate or an emergency excavation as those terms are defined constitutes a false alarm pursuant to 45-7-204 and is subject to the penalties under 45-7-204.

NEW SECTION. Section 6. Repealer. Sections 69-4-506 and 69-4-511, MCA, are repealed.

NEW SECTION. Section 7. Codification instruction. [Section 5] is intended to be codified as an integral part of Title 69, chapter 4, part 5, and the provisions of Title 69, chapter 4, part 5, apply to [section 5].

-END-